

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.20137 Additional relief; failure of facility owner or operator to report hazardous substance release; civil fine; providing copy of complaint to attorney general; jurisdiction; judicial review; intervenor.

Sec. 20137.

(1) Subject to subsections (2) and (3), in addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:

(a) Temporary or permanent injunctive relief necessary to protect the public health, safety, or welfare, or the environment from the release or threat of release.

(b) Recovery of state response activity costs pursuant to section 20126a.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(d) A declaratory judgment on liability for future response activity costs and damages.

(e) A civil fine of not more than \$1,000.00 for each day of noncompliance without sufficient cause with a written request of the department pursuant to section 20114(1)(h). A fine imposed under this subdivision shall be based on the seriousness of the violation and any good faith efforts of the person to comply with the request of the department.

(f) A civil fine of not more than \$10,000.00 for each day of violation of this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts of the person to comply with this part.

(g) A civil fine of not more than \$25,000.00 for each day of violation of a judicial order or an administrative order issued pursuant to section 20119, including exemplary damages pursuant to section 20119.

(h) Enforcement of an administrative order issued pursuant to section 20119.

(i) Enforcement of information gathering and entry authority pursuant to section 20117.

(j) Enforcement of the reporting requirements under section 20114.

(k) Any other relief necessary for the enforcement of this part.

(2) An owner or operator of a facility from which a hazardous substance is released that is determined to be reportable under section 20114(1)(b)(i), other than a permitted release, who fails to notify the department within 24 hours after obtaining knowledge of the release or who submits in such notification any information that the person knows to be false or misleading, is subject to a civil fine of not more than \$25,000.00 for each day in which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good-faith efforts by the violator to comply with this subsection.

(3) A person who is responsible for an activity causing a release in excess of the concentrations that satisfy the criteria established pursuant to section 20120a(1)(a) or (b), as appropriate for the use of the property, is subject to a civil fine as provided in this part unless a fine or penalty has already been imposed for the release under another part of this act. However, a civil fine shall not be imposed under this subsection against a person who made a good-faith effort to prevent the release and to comply with the provisions of this part. This subsection does not apply to a release from an underground storage tank system as defined in part 213.

(4) If an action is brought under this part by a plaintiff other than the attorney general, the plaintiff shall, at the time of filing, provide a copy of the complaint to the attorney general.

(5) Except as otherwise provided in this part, an action brought under this part may be brought in the circuit court for the county of Ingham, in the county in which the defendant resides, has a place of business, or in which the registered office of a defendant corporation is located, or in the county where the release occurred.

(6) A state court does not have jurisdiction to review challenges to a response activity selected or approved by the department under this part or to review an administrative order issued under this part in any action except an action that is 1 of the following:

(a) An action to recover response costs, damages, or for contribution.

(b) An action by the state to enforce an administrative order under this part or by any other person under section 20135(1)(b) to enforce an administrative order or to recover a fine for violation of an order.

(c) An action pursuant to section 20119(5) for review of a decision by the department denying or limiting reimbursement.

(d) An action pursuant to section 20135 challenging a response activity selected or approved by the department, if the action is filed after the completion of the response activity.

(e) An action by the state pursuant to section 20126a(6) to compel response activity.

(7) In any judicial action under this part, judicial review of any issues concerning the selection or adequacy of a response activity taken, ordered, or agreed to by the state are limited to the administrative record. If the court finds

that the record is incomplete or inadequate, the court may consider supplemental material in the action. In considering objections raised in a judicial action under this part, the court shall uphold the state's decision in selecting a response activity unless the objecting party can demonstrate based on the administrative record that the decision was arbitrary and capricious or otherwise not in accordance with law. In reviewing alleged procedural errors, the court may disallow costs or damages only to the extent the errors were so serious and related to matters of such central importance that the activity would have been significantly changed had the errors not been made.

(8) In an action commenced under this part, any person may intervene as a matter of right if that person claims an interest relating to the subject matter of the action and is situated so that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the court finds the person's interest is adequately represented by an existing party.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1995, Act 71, Imd. Eff. June 5, 1995 ;-- Am. 2010, Act 230, Imd. Eff. Dec. 14, 2010

Popular Name: Act 451

Popular Name: Environmental Remediation

Popular Name: Environmental Response Act

Popular Name: NREPA